ANNE THERESA DE SOUZA A

v.

MAJLIS AGAMA ISLAM, JABATAN AGAMA ISLAM SELANGOR & ORS AND OTHER APPEALS B

COURT OF APPEAL, PUTRAJAYA
TENGKU BAHARUDIN SHAH JCA
VINCENT NG JCA
SULONG MATJERAIE JCA
[CIVIL APPEALS NOS: B-01-76-2006, C
B-01-77-2006 & B-01-78-2006]
16 MARCH 2010

CIVIL PROCEDURE: *Appeal - Appeal to Court of Appeal - Competency - Capacity of parties - Appellant acquired new identity card and new name upon conversion to Islam - Appeal filed in appellant's old name - Whether appellant a non-entity - Whether having no capacity to institute appeal - Whether appeal incompetent - Rules of the High Court 1980, O. 5 r. 6(1) - National Registration Act 1959, s. 5* D

WORDS & PHRASES: *"in person" - Order 5 r. 6(1) Rules of the High Court 1980 - Whether referring to a natural person who could be legally identified* E

Lim Yoke Khoon, the appellant in the second appeal herein, had acquired a new Identity Card ('IC') and a new name of Noorashikin Lim Binti Abdullah ('Noorashikin') upon her conversion to Islam. Her new name notwithstanding, the appellant had subsequently affirmed a Deed Poll and a Declaration using both her old and new names, and further filed an Originating Summons ('OS') in the court below using the name Lim Yoke Khoon. Additionally, the name Lim Yoke Khoon was also used when the appellant filed an appeal against the decision on her OS. At the hearing of the appeal, in view of the multiple identities appearing in the appellant's cause papers – a question arose as to whether the appellant had a legal entity to prosecute the appeal or the OS, and consequently whether her appeal was or was not competently before the court. The respondents took the stand that the misnomer was fatal, as Lim Yoke Khoon had ceased to exist upon the appellant acquiring a new name and IC. The appellant however retorted that the question of misnomer did not arise, as the name Lim Yoke Khoon F G H I

A referred to a legal and living person. This aside, leave was orally sought to make the necessary amendment should the justices of appeal were not with her on the issue.

Held (striking out appeal(s))

B **Per Tengku Baharudin Shah JCA delivering the judgment of the court:**

(1) The National Registration Act 1959 ('NRA') is the law that provides for the registration of persons in Malaysia, for the issue of identity cards and for purposes connected with it. Section 5 C of the Act makes it mandatory for every person within Malaysia to be registered under and in accordance with it. So, any person in Malaysia must have an IC which serves as his official and legal identification document and contains his prescribed particulars. (para 9) D

(2) Order 5 r. 6(1) Rules of the High Court 1980 provides that any person other than a person under disability or body corporate may begin and carry on proceedings in the High Court by a solicitor or in person. The words "in person" there, in view of E the exception, must necessarily refer to a natural person who can be legally identified. (para 9)

(3) The appellant had purported to depose an affidavit in support of the OS, but the IC number ascribed to her therein in fact F belonged to Noorashikin. Likewise, the Deed Poll purportedly sworn by Noorashikin appeared to be signed by the appellant, whereas the Surat Akuan purportedly sworn and signed by the appellant bore the IC number of Noorashikin. Amidst such confusion and misnomer, one fact however stood unchallenged. G The natural person and the holder of IC No. 730218-05-5122 was Noorashikin and not the appellant or plaintiff. (para 10)

(4) One may prefer to use names other than one's registered name but that would not alter one's legal identity as reflected in the IC unless and until such preference was duly effected according H to the NRA. Be that as it may – for the moment – the appellant remained a non-entity, could not initiate the OS in the High Court, and had no capacity to come before this court by way of appeal against the decision made, which was itself in the circumstances a nullity. (para 10) I

(5) As the appeal was not properly before the court, the application to amend the appellant's name, being interlocutory to an incompetent appeal, could not be entertained. (para 10)

[Decision binding on two other appeals by prior consent of parties.]

Bahasa Malaysia *Translation Of Headnotes*

Lim Yoke Khoon, perayu dalam rayuan kedua di sini, telah memperoleh Kad Pengenalan baru ('KP') dan nama baru Noorashikin Lim binti Abdullah ('Noorashikin') sewaktu beliau memeluk agama Islam. Walaupun telah memperoleh nama baru, perayu kemudiannya mengikrarkan satu Suratikatan Pol dan Surat Akuan dengan menggunakan kedua-dua nama lama dan barunya, dan selanjutnya telah memfailkan suatu saman pemula ('SP') dengan menggunakan nama Lim Yoke Khoon. Selain itu, nama Lim Yoke Khoon juga digunakan apabila perayu memfailkan rayuan terhadap keputusan SPnya. Di pendengaran rayuan, disebabkan oleh kepelbagaian nama yang digunakan perayu di dalam kertas kausanya – persoalan berbangkit sama ada perayu mempunyai entiti sah di sisi undang-undang untuk mendakwa rayuan atau SP, dan kerana itu sama ada rayuannya di hadapan mahkamah merupakan satu rayuan yang berkompeten atau pun tidak. Responden-responden mengambil pendirian bahawa salah nyata nama adalah bermudarat, memandangkan Lim Yoke Khoon sudah tidak lagi wujud selepas perayu memperoleh nama dan KP yang baru. Perayu bagaimanapun berhujah balas bahawa soal salah nyata nama tidak berbangkit, oleh kerana nama perayu merujuk kepada seseorang yang hidup dan wujud secara sah. Di samping itu, satu permohonan lisan telah dibuat oleh perayu untuk membuat pindaan-pindaan perlu sekiranya yang arif hakim-hakim rayuan tidak bersamanya dalam isu ini.

Diputuskan (membatalkan rayuan)
Oleh Tengku Baharudin Shah JCA menyampaikan penghakiman mahkamah:

(1) Akta Pendaftaran Negara 1959 ('APN') adalah undang-undang yang membuat peruntukan mengenai pendaftaran orang-orang di Malaysia, untuk pengeluaran kad-kad pengenalan dan maksud-maksud yang berkaitan dengannya. Seksyen 5 Akta telah mewajibkan setiap orang di Malaysia supaya didaftarkan di bawah dan mengikut seksyen tersebut. Oleh itu, setiap orang di Malaysia harus memiliki KPnya sendiri yang bertindak sebagai pengenalan dirinya yang sah dan rasmi dan mengandungi butir-butir peribadinya.

A **(2)** Aturan 5 k. 6(1) Kaedah-Kaedah Mahkamah Tinggi 1980 memperuntukkan bahawa mana-mana orang selain dari orang tak berkeupayaan atau syarikat yang diperbadan boleh memulakan dan mendakwa prosiding di Mahkamah Tinggi melalui seorang peguamcara atau secara sendiri. Perkataan
B "secara sendiri" di situ, mengambilkira pengecualian, semestinyalah merujuk kepada orang sebenar yang boleh dikenalpasti di sisi undang-undang.

(3) Perayu kelihatannya telah mendeposkan satu afidavit bagi
C menyokong SPnya, namun nombor KP yang dikaitkan kepadanya di situ sebenarnya adalah milik Noorashikin. Begitu juga, Suratikatan Pol yang kelihatan diikrarkan oleh Noorashikin telah ditandatangani oleh perayu, sementara Surat Akuan pula yang diikrarkan oleh perayu mempamerkan nombor KP
D Noorashikin. Apapun, dalam semua kekekeliruan ini, wujud satu fakta yang tidak tercabar. Orang sebenar dan pemegang KP No. 730218-05-5122 adalah Noorashikin dan bukannya perayu atau plaintif.

E **(4)** Seorang boleh sahaja menggunakan nama lain selain dari nama berdaftarnya, namun itu tidak akan menukar identitinya seperti yang tercermin di dalam KPnya kecualilah jika penggunaan nama lain tersebut dibuat mengikut kehendak APN. Apapun –
F keadaannya sekarang adalah – bahawa perayu adalah tidak berentiti, tidak boleh memulakan SP di Mahkamah Tinggi dan tidak berkapasiti untuk datang ke mahkamah ini melalui cara rayuan terhadap keputusan yang dibuat tersebut, yang dalam halkeadaan yang wujud juga merupakan satu ketaksahan.

G **(5)** Oleh kerana rayuan tidak berada di hadapan mahkamah dengan secara wajar, maka permohonan untuk meminda, yang bersifat interlokutori dan dibuat dalam rayuan yang tak berkompeten, adalah tidak boleh dilayani.

[Keputusan mengikat perayu-perayu lain atas persetujuan terdahulu pihak-
H *pihak.]*

Legislation referred to:
National Registration Act 1959, s. 5
Rules of the High Court 1980, O. 5 r. 6(1)

I

For the appellant - Edmund Bon (Shanmuga Kanesalingam, Sharmala Balasundram & Nik Mohamed Ikhwan with him); M/s Chooi & Co
For the 1st respondent - Kamar Azura; M/s Aishah Kama & Sabri
For the 2nd respondent (Kerajaan Negeri Selangor) - Datin Paduka Zauyah, State Legal Advisor (Mohd Azahari with her)
For the 3rd & 4th respondents (Ketua Pengarah Jabatan Pendaftaran Negara, Malaysia & Kerajaan Malaysia) - Nizam Zakaria SFC (Arik Sanusi & Mona Hazratulaswati bersamanya)

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Tengku Baharudin Shah JCA:

[1] When these appeals came before us the parties agreed, as similarly done in the court below, that only appeal RS No. B-01-77-06 be heard and the decision thereon would bind the other appeals RS No. B-01-76-06 and RS No. B-01-78-06.

[2] At the outset, I asked the parties to submit on whether we had a competent appeal before us as the appellant appeared to have no legal entity and whether a non legal entity could prosecute the appeal or initiate an action in court.

[3] Learned counsel for the appellant En. Edmund Bon referred to the Deed Poll at p. 312 of the appeal record (AR) and submitted that the appellant had stopped using her Muslim name of Noorashikin Lim binti Abdullah (Noorashikin) by the said Deed Poll. He referred to her birth certificate at 279 AR which bore her original Chinese name of Lim Yoke Khoon. He also referred to her conversion certificate at 281 AR and contended that there was no dispute as to her identity and no prejudice was caused. He further submitted that the name of the appellant referred to a legal person and a living person.

[4] In the event the court was not with him learned counsel sought to make an oral amendment to the appellant's name by substituting the later name in the title of this proceeding with the earlier name and *vice versa*.

[5] Datin Paduka Zauyah on behalf of Kerajaan Negeri Selangor (second respondent) contended that the appellant ceased to exist in law when she converted to Islam and took another name. Learned counsel did not object to the name change at first but later reversed

her stand. She averred that the appeal was not competent because the appellant was not a legal entity. She referred to the Surat Akuan at 306 AR and the Deed Poll at 312 AR. Pn. Kamar Azura for Majlis Agama Islam (first respondent) objected to the amendment as the appeal was Incompetant. She pointed that the identity card (I/C) number differed from the present I/C number in the Muslim name. In fact the Deed Poll at 292 AR was sworn by Noorashikin but signed by Lim Yoke Khoon. She also pointed out that the I/C number in Surat Akuan at 306 AR did not in fact refer to the person named in the I/C of that number at 280 AR.

[6] En. Arik Sanusi for the Director General of the National Registration Department (third respondent) and the Government of Malaysia (fourth respondent) also submitted that the appeal was incompetent because the names used were confusing. He contended that in law the identity of a person is based on his I/C. The person named as plaintiff and now the appellant no longer existed. On that basis he raised a preliminary objection that the misnomer was fatal as there was no plaintiff or appellant as named.

[7] In his reply En. Bon said since the originating summons (OS) was served with the supporting affidavit until then there was no dispute as to the identity of the appellant as a legal and natural person, a Malaysian citizen and a competent person to seek remedies in this court. There was no question of multiple identities. He stressed that no disability was shown by the respondent in law or fact which prevented the appellant from seeking legal remedies.

[8] At the close of arguments we ruled by majority, with our late brother Vincent Ng JCA dissenting, that the appeal was incompetent and not properly before the court. The person named as the appellant who was also the plaintiff in the court below was not a legal entity. She had converted to Islam and acquired a new identity by the name of Noorashikin and also changed her I/C to I/C No. 730218-05-5122. We struck out the appeal but made no order in respect of costs as the fatal issue emanated from the bench rather than the bar.

[9] Rules of court regulate and prescribe the procedure and practice to be followed in the courts in all causes and matters in or with respect to which the courts have for the time being jurisdiction and any matters incidental thereto. Order 5 r. 6(1) of the Rules of the High Court 1980 (the RHC) provides that any

person other than a person under disability or body corporate may begin and carry on proceedings in the High Court by a solicitor or in person. The words "any person" there, in view of the exception must necessarily refer to a natural person who can be legally identified. The National Registration Act 1959 (the NRA) is the law that provides for the registration of persons in Malaysia, for the issue of identity cards and for purposes connected with it. Section 5 of the NRA makes it mandatory for every person within Malaysia to be registered under and in accordance with it. So any person in Malaysia must have an I/C which serves as his official and legal identification document and contains his prescribed particulars.

[10] In the present case, the person named as the appellant before us and as the plaintiff in the court below had no legal identity. Put in another way, there was no natural person or legal entity by the name of the plaintiff or appellant when the OS was instituted, or this appeal filed. The appellant purported to depose the affidavit filed in support of the OS but the I/C number ascribed to her therein in fact belonged to Noorashikin. The Deed Poll purportedly sworn by Noorashikin at 292 AR appeared to be signed by the appellant (her name appears to be the signatory) whereas the Surat Akuan purportedly sworn and signed by the appellant at 306 AR bear the I/C number of Noorashikin. Amidst such confusion and misnomer one fact that stood out unchallenged was that the natural person and the holder of I/C No. 730218-05-5122 was Noorashikin and not the appellant or plaintiff. One may prefer to use names other than one's registered name but that would not alter one's legal identity as reflected in the I/C unless and until such preference was duly effected according to the NRA. For the moment the appellant remained a non-entity, could not initiate the OS in the High Court, and had no capacity to come to this court by way of appeal against the decision made which was itself in the circumstances a nullity. The appeal was clearly incompetent and not properly before us. Accordingly, the application to amend the appellant's name, being interlocutory to an incompetent appeal could not be entertained.

[11] En. Bon submitted that the appellant's identity was until then not disputed as being a natural person and a Malaysian citizen competent to seek remedies in the courts. The issue of identity was only a label and no disability was shown to prevent the appellant from coming to court to seek legal redress. With respect, whether a

A non-entity can institute a claim or lodge an appeal was not a technical issue nor an irregularity that could be waived. It was a basic issue of law and jurisdiction which was fatal to the proceedings. It was not a mere question of labelling. Without a litigant there would be no litigation. We had no appellant before us.
B Nobody was prevented from coming to court to seek relief, only that, in this case, nobody came.

[12] For the abovesaid reasons we made the order we did. As agreed at the outset the related appeals would be bound by the
C decision. Our late brother did not impart his reasons to differ except to indicate his preference for the merit to be heard.

D

E

F

G

H

I